IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 12139 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MADHAVBHAI SHANKERBHAI PATEL - Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MR BS PATEL for Petitioner(s) : 1,MRS RANJAN B PATEL for Petitioner(s) : 1,
MS REETA CHANDARANA, AGP for Respondent(s) : 1,2
MR RE VARIAVA for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 03/03/2006

ORAL JUDGMENT

1.In the present petition, the petitioner who is employed by the Visnagar Municipality has challenged an order dated 27-08-2004 passed by the Collector, Mehsana. The

petitioner has also challenged an order passed by the State Government on 05-05-2005 by which the order of the Collector was substantially upheld and the revision application of the petitioner was rejected.

2. Short facts leading to the present petition are that the petitioner was working as Junior Clerk with the respondent no.3. By an order dated 31-01-2000, the petitioner came to be promoted to the next higher post of Senior Clerk. The petitioner actually discharged his duties on the promotional post for nearly four years. The Collector, Mehsana further by his impugned order dated 27-08-2004 quashed the resolution of the Municipality by which the petitioner was so promoted. Interestingly though the direct effect of the impugned order of the Collector was of reversion to the original post, Collector passed such order without giving any opportunity of being heard to the petitioner. The petitioner was not party before such proceedings before the Collector, whereby the Collector in exercise of power under section 258 of the Gujarat Municipalities Act was revising the decision of the Nagarpalika. The petitioner preferred the revision application before the State Government against the order passed by the

Collector. The State Government however, turned down the revision application by its impugned order dated 05-05-2005. In the order dated 27-08-2004, the Collector observed that the pay scale of Senior Clerk is 1200-2040 whereas the petitioner is ordered to be placed in the pay scale of 1600-2660 and, thereafter, three advance increments are ordered to be released for which there is no provision. It was further observed that seniority list is not maintained without which promotion cannot be granted. It was further observed that no prior permission of the Director of Municipalities or the State Government was taken. On this ground, the Collector was pleased to quash the promotion of the petitioner.

3.At the outset, as noted earlier the order was passed by the Collector without ever hearing the petitioner. Thus the petitioner's promotion came to be quashed without affording any opportunity of being heard to him. On this basic ground itself, the order of the Collector suffers from legal defect. Moreover, if the Collector had any doubt about the correct pay fixation of the petitioner, the same could have been ordered to be rectified. Wrong pay fixation certainly would not give

rise to reverting a person who is already promoted. Thirdly, it is stated by respondent no.3 in further affidavit dated 07-10-2005 that persons in the clerical cadre who have not passed matric examination have not been considered, while other persons senior to the petitioner had given in writing that they are no not inclined to accept promotion. There is no denial to this factual averment. It may also be noted that there was no opposition for the promotion of the petitioner by any other co-employee in the same cadre which would establish the veracity of the statement of the Municipality. Lastly, it is stated that by the learned advocate for the petitioner that post was a sanctioned post and before granting promotion there was no requirement to seek any further approval from any authority.

4. Considering all these aspects of the matter, order passed by the Collector is required to be quashed and set aside. The same is quashed. Consequently, the order passed by the Government also therefore, does not survive. The final relief to be granted to the petitioner shall however, have to be moulded. Subsequent to order passed by the Collector, the

petitioner has discharged his duties on the lower post. While restoring him his promotion, arrears of salary for the higher post cannot be granted. In the result it is directed that though the petitioner will be allowed to resume his post in the promotional post of Senior Clerk, the Municipality shall carry out his pay fixation in accordance with rules afresh for proper pay scale and also grant him notional benefit of promotion for the intervening period. The decision that Municipality may take finally may be open for the Government or Director of the Municipalities to examine in accordance with law, if found necessary.

5. In view of the above directions, the petition is allowed. Rule is made absolute to the above extent with no order as to costs.

(Akil Kureshi,J.)

(raghu)